

Dear _____ :

This letter responds to your letter dated September 4, 2020, as supplemented by subsequent information and documentation, requesting a ruling on the federal income tax consequences of the Proposed Transaction (defined below). The information submitted in that letter and subsequent correspondence is summarized below.

This letter is issued pursuant to section 6.03(2) of Rev. Proc. 2020-1, 2020-1 I.R.B. 1, regarding one or more significant issues under section 355 of the Internal Revenue Code (the "Code"), and section 3.01(62) of Rev. Proc. 2020-3, 2020-1 I.R.B. 131, with respect to a significant issue under section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d) pertaining to device. The rulings contained in this letter are based on information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for the ruling. Verification of the information, representations, and other data may be required as part of the audit process.

Summary of Facts

Distributing is State A corporation, the stock of which is publicly traded and widely held. Distributing operates Business A and, prior to Date 1, operated Business B. On Date 1, Distributing formed Controlled, a State A corporation. Distributing contributed assets and liabilities to Controlled representing the operations of Business B. On Date 2, Distributing distributed all of the stock of Controlled to Distributing's shareholders (the "Spin-Off").

On Date 3, Date 4, and Date 5, Distributing made an open market repurchase of a, b, and c shares of Distributing stock, respectively (the "Open Market Repurchases"). The Open Market Repurchases represent less than d% of Distributing stock outstanding.

Proposed Transaction

Distributing proposes to engage in the following transaction (collectively, the steps comprise the "Proposed Transaction"):

1. Distributing and one or more investment banks, brokers, or other financial institutions (the "Financial Institutions") will enter into an agreement pursuant to which Distributing agrees to pay a specified amount of cash ("Aggregate Repurchase Amount") to purchase Distributing common stock from the Financial Institutions.

2. The Financial Institutions will borrow shares of Distributing common stock in the public stock loan market.
3. The Financial Institutions will sell the shares borrowed in Step 2 to Distributing in a single transaction (the "Initial Stock Sale") for an aggregate amount equal to an agreed percentage of the Aggregate Repurchase Amount, and at an initial price equal to the closing price of Distributing common stock on the date of such sale.
4. After a specified period of time has elapsed (the "True-Up Period"), during which the Financial Institutions will borrow or acquire additional shares of Distributing stock in the public markets, the Financial Institutions will deliver to Distributing a number of additional shares of Distributing stock such that the total number of shares delivered to Distributing (including the shares delivered in the Initial Stock Sale) is equal to the Aggregate Repurchase Amount divided by the arithmetic mean of the volume weighted average price of the Distributing stock for each day during the True-Up Period, as adjusted to reflect a pre-agreed discount (such additional shares, the "True-Up Stock").
5. Following the Initial Stock Sale and/or the delivery of the True-Up Stock, the Financial Institutions will purchase shares of Distributing stock in the open market to settle the borrowings described above.

Representations

With respect to the Spin-Off and the Proposed Transaction, Distributing has made the following representations:

- a) Not taking into account the Proposed Transaction, the Spin-Off qualified as a transaction that was generally tax-free to Distributing and its shareholders under sections 355, 361, and 368(a)(1)(D).
- b) From the time of the Spin-Off, Distributing has had no plan or intention to effect any share repurchase, other than potential repurchases that would satisfy the following criteria: there is a sufficient corporate business purpose for the stock purchase; the stock to be purchased is widely held; and the aggregate amount of stock purchases would not equal or exceed 20 percent of the outstanding Distributing stock.
- c) The persons that sell or lend Distributing stock to the Financial Institutions in connection with the Proposed Transaction will be third parties unrelated to Distributing. The price Distributing pays for the repurchased stock will be negotiated with the Financial Institutions on an arm's-length basis. Distributing will not know the identity of any lender or seller of its stock to the Financial Institutions.

- d) The Spin-Off was consummated for a corporate business purpose.
- e) The Proposed Transaction will be consummated for a corporate business purpose.
- f) The Proposed Transaction is not motivated to any extent by a desire to increase or decrease the ownership percentage of any particular shareholder or group of shareholders.
- g) Distributing will not know with certainty the identity of any shareholder from which stock is borrowed or purchased by any Financial Institution that participates in the Proposed Transaction.
- h) The aggregate amount of stock purchased or acquired through the Proposed Transaction and the Open Market Repurchases will not equal or exceed 20 percent of the outstanding stock of Distributing.

Ruling

Based solely on the information submitted and representations set forth above, we rule as follows:

For purposes of section 355(a)(1)(B) and Treas. Reg. §1.355-2(d), the Proposed Transaction will be subject to the same analysis as an otherwise similar repurchase by Distributing of its stock on the open market.

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transaction under other provisions of the Code or regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the Proposed Transaction that is not specifically addressed by this letter. Specifically, we express no opinion on whether the Spin-Off qualifies under sections 355, 361 and 368(a)(1)(D).

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Susan E. Massey
Susan E. Massey
Branch Chief, Branch 3
Office of Associate Chief Counsel (Corporate)

cc: